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**COURT & CLERK RECORDS:  
ACCESS & MAINTENANCE**

**REQUESTS FOR ACCESS TO  
COURT HEARING RECORDS**

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**RIGHT OF PUBLIC ACCESS TO COURT RECORDS**

**Administrative Rule 9**

All Court Records, regardless of the manner of creation, method of collection, form of storage, or the form the record is maintained are accessible to the public except as provided in Administrative Rule 9(G). To the extent that Administrative Rule 9 does not apply, access to Court Records is controlled by the Indiana Access to Public Records Act, I.C. 5-14-3. See Administrative Rule 9(A)(1).

In its Commentary to Administrative Rule 9(A), the Supreme Court emphasizes the breadth of its contemplated public access.

*This rule starts from the presumption of open Public Access to Court Records. In some circumstances; however, there may be sound reasons for restricting access to these records. This rule recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to Court Records, this rule also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access.*

As defined by Administrative Rule 9(C), Court Records consist of:

- Case Records - any document, information, data, or other item created, collected, received, or maintained by a Court, Court agency or Clerk of Court in connection with a particular case and
- Court Administrative Records - Court, Court agency, or Clerk of Court pertaining to the administration of the judicial branch of government and not associated with any particular case.

**Court Records include audio or video recordings of court proceedings made by a Court Reporter.**

**Administrative Rule 10**

The commentary to Administrative Rule 10, Security of Court Records, provides additional guidance regarding access to audio and video recordings of court

## Proceedings:

*The court is required to preserve the integrity of audio and video recordings of court proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to*

- *supervised playback for listening or copying,*
- *creating a copy of the recording for use during said playback,*
- *serving notice to the parties that the recording is being accessed, and*
- *providing a copy, clearly identified as such.*

*As prescribed by Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)], because the court is further required to prohibit broadcasting or televising court proceedings, the court may employ methods to restrict publication of copies of court proceedings made during the pendency of the case.*

## MANAGEMENT OF ACCESS

A court may manage access to evidence and recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with prohibitions on broadcast of court proceedings outlined in Indiana [Judicial Conduct Rule 2.17](#).

A court's access management authority does not extend to denial of access to a public record allowed under Administrative Rule 9(D)(1) or denial of the opportunity for playback of recorded hearings when playback is requested by a litigant, member of the public, or the news media.

## TIME FOR RESPONSE TO A REQUEST

Administrative Rule 9 does not contain specific provisions governing when a response to a request is due. As a result, the provisions of I.C. 5-14-3 have direct application. Section 9 provides that a denial of disclosure occurs when:

- the person making the request is physically present in the office of the agency,
- makes the request by telephone,
- or requests enhanced access to a document

and

- the person responsible for public records release decisions refuses to permit inspection and copying of a public record or
- twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record,

whichever occurs first.

If the request is made by mail or by facsimile, a denial of disclosure does not occur until seven (7) days have elapsed from the date the receipt of the request.

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial is in writing or by facsimile; and the denial **includes** a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial.

The response must acknowledge the request and provide a statement of when and how the record will be provided even if production cannot be immediate, e.g. duties related to an ongoing trial.

## **DENIAL BY ANOTHER MEANS**

When access to a recording of a court proceeding is sought, the response must appropriately address the need for access so that it occurs in a manner that is not tantamount to a denial of access. For example:

- the cost of a lengthy typed transcript as opposed to provision of a copy of a DVD
- postponement of listening to the direct testimony of a witness in advance of cross examination until the presentation of the evidence is concluded.

## **AUDIO AND VISUAL RECORDINGS ENTERED INTO EVIDENCE**

Requests for access often involve recordings that have been submitted as evidence in a trial or hearing, e.g. recordings of 911 calls, security camera videos, witness interviews or statements, or depositions. These evidentiary materials are available for public access and examination in accordance with the same rules and procedures as documentary items or recordings of court proceedings.

In the view of State Court Administration, provision of copies of these audio and/or visual portions of the evidence does not violate Rule 2.17 of the Code of Judicial Conduct. The rule only prohibits “...broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions ...”.

However, if a court is unsure, it may elect to treat the materials as “court proceedings” and follow the best practices noted below. Please note, this particular question has never been litigated by an appellate court in Indiana.

## BEST PRACTICES

- Always maintain control and supervision of the original.
- Prepare the copy if one is sought.
- A party to a case “may have greater access to Court Records”, such as a recording of a court proceeding. See AR 9(B)(1)(d). Note that while the Public Access Counselor has issued several opinions stating that provision of a transcript in lieu of a copy of a recording is permissible, the opinions have turned upon the lack of equipment to produce the sought copy of the recording.
- Redact any confidential material contained on the record if appropriate action was taken under AR 9 to exclude the material from public access.
- Always enter an order consistent with Code of Judicial Conduct, Canon 2, Rule 2.17 that prohibits the recording recipient from broadcasting all or any portion of the recorded proceeding. See below.
- Consider denying the request if you have a reasonable belief the requester plans to broadcast the court hearing regardless of any sanction contemplated by the order. In that situation, provide a written transcript at court cost.
- Do not assess any charges except those authorized by I.C. 5-14-3-8. Do not assess a charge if a court staffer is required to supervise the playback of a court hearing so that a requester may copy it on the requester’s equipment.

### Sample Rule 2.17 Order:

(Name of requestor) has sought and received a copy of the oral testimony presented on (date) in this case. In accordance with the Indiana Code of Judicial Conduct, Canon 2, Rule 2.17, the Court orders that the requestor shall not facilitate or allow the public broadcast of such testimony.

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